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on Wednesday, 9 May 2001, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.470/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Kazakhstan (CAT/C/47/Add.1)

1. At the invitation of the Chairman, Mr. Abdildin, Mr. Rogov, Mr. Danenov and Mr. Akhmetov (Kazakhstan) took places at the Committee table.

2. Mr. ABDILDIN (Kazakhstan) said that the initial report of his country had been prepared jointly by the President's Human Rights Commission, the Ministries of Justice and the Interior, the Office of the Procurator-General and the National Security Committee.

3. Kazakhstan had embarked upon the path to democracy, promulgating a whole set of legislative texts in recent years to protect human rights, including the 1995 Constitution, which contained 30 articles devoted to fundamental civil rights, the 1997 Criminal Code, the 1997 Code of Criminal Procedure, the 1998 Code for the Execution of Criminal Penalties, all three of which made acts of torture committed on Kazakh territory punishable, the Act on the pre-trial detention of suspects and accused persons, the Act on the protection of parties to a criminal trial, the order creating a cross-institutional commission to reform the prison system and the decree of the plenary Supreme Court of July 1999 on compensation for victims of offences committed by officials of the public administration responsible for the conduct of criminal proceedings. Since becoming independent 10 years previously, Kazakhstan had also ratified more than 20 international human rights instruments, which had been incorporated into domestic law.

4. Legal protection against torture was ensured by independent courts, whose activities were subject only to the Constitution and the law. A new constitutional law on the organization of the magistracy and the status of judges had entered into force in December 2000, guaranteeing the independence of the judiciary from the legislative and executive branches.

5. The Constitution, the Code of Criminal Procedure and the 1997 Act on the activities of lawyers offered protection against the risk of torture by ensuring that every arrested person had the right to see a lawyer without delay and to be visited by a family member. The Office of the Procurator was also required to monitor respect for human rights on the part of the investigative bodies, the administrative services responsible for the enforcement of sentences and the prison administration.

6. In accordance with the Constitution and the international obligations entered into by Kazakhstan, the Parliament had decided to shift responsibility for the prisons from the Ministry of the Interior to the Ministry of Justice. Only the pre-trial detention centres (IVS) and the detention centres for detainees awaiting judgment (SIZO) were still under the authority of the Ministry of the Interior, because the transfer of power to the Ministry of Justice was taking place in stages. A department for the administration of pre-trial detention centres (IVS and SIZO) had been set up in the Ministry of the Interior to take the necessary measures to improve detention conditions and defend human rights.

7. Concerning education in the field of human rights, training seminars and courses for prison and law enforcement staff were regularly held with the help of UNDP and the Office of the High Commissioner for Human Rights.

8. As Kazakh legislation had made torture an offence, confessions obtained by such means could not be used as evidence in a trial. Moreover, under criminal law, anyone who committed an act of torture was liable, even if the country was in a state of war. A bill to establish the office of ombudsman was currently being examined, notably by experts from the Organization for Security and Cooperation in Europe. If adopted, it would help ensure protection against torture. In closing, he pointed out that as Kazakhstan was in transition to democracy, much remained to be done in the area of human rights, but his Government was genuinely determined to move ahead on that path.

9. Mr. ROGOV (Kazakhstan) noted that the initial country report had been prepared in cooperation with non-governmental organizations and that all their proposals and comments were reflected therein.

10. The new Criminal Code in force since 1998 contained a whole set of provisions aimed at protecting the right to life and health of arrested persons and entitled victims of ill-treatment and acts of torture to receive compensation from the State. As already alluded to by Mr. Abdildin, anyone deprived of liberty had the right to the assistance of a lawyer upon arrest. Witnesses who so wished could decline to testify other than in the presence of their lawyer; the Constitution provided that no one could be forced to bear witness against himself, his spouse or his family.

11. Special attention was given in criminal legislation to norms relating to coercive measures taken prior to trial. Anyone suspected of an offence and deprived of liberty had the right to inform his family in the first 12 hours of detention. A suspect must be presented with an arrest warrant within 72 hours of detention or else be released immediately. Everyone had the right to appeal against an extension of detention as well as any decision by the investigating judge and the procurator supervising the proceedings. Particular attention was given to ensuring respect for the rights and freedoms of citizens lacking legal capacity, minors and persons not responsible for their actions.

12. As for the Code of Criminal Procedure, it made provision for a set of mechanisms to monitor judicial proceedings so as to prevent the use of illegal methods. For example, provisions relating to establishing the facts entitled all parties to a trial to demand that the various stages of the investigation be recorded on cassette or videocassette. In order to meet new needs in the legal sphere, a new type of evaluation had been instituted in 1999: a psychological appraisal, which used video and sometimes voice recordings to determine a person's mental state at different times during the proceedings.

13. In January 2001, the Kazakh Government had adopted a programme to improve the material and technical infrastructure of the entire prison system. Since 1998, Kazakh prisons had also actively cooperated with international humanitarian organizations. Between 1998 and 2000,

together with an organization involved in prison reform and a Dutch association working to combat tuberculosis, a health-care programme for detainees with that illness had been launched in the prisons of the Pavlodarsk region. Prison staff had also attended training courses offered by international experts who had cited the example of Polish prisons as a model.

14. A five-year project to reform prisons, train prison administration instructors in the area of human rights and work on strategic planning had begun in 2000.

15. It was also planned to create a department of justice for minors and fix norms to ensure its effectiveness. In conformity with the 1998 Constitution, trials by jury were to be introduced in the near future, and judges would be required to specialize in various fields. Moreover, Kazakhstan intended to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and its optional protocols, as well as the Rome Statute of the International Criminal Court.

16. Mr. YAKOVLEV (Alternate Country Rapporteur), noting that he and Ms. Gaer, the Country Rapporteur, had decided that he would take the floor first, focused his remarks on the first part of the Convention. He welcomed the report and the oral introduction, which showed that Kazakhstan had taken concrete measures to exclude any risk of the use of torture in its police and prison systems. But it was a young republic, and the past continued to have an impact.

17. The definition of torture in Kazakhstan's Criminal Code was not entirely in conformity with the one in article 1 of the Convention. The wording of the Criminal Code did not highlight the specific nature of torture and did not show how such violence differed from other forms of assault. One of the distinctive features of the Convention's definition of torture, namely the reference to public officials as perpetrators, did not appear in Kazakhstan's legislation. The means used to obtain a confession were important, but there were also other aspects, such as punishment and discrimination, which the definition must include without fail. It should also be stressed that mental torture could have even more disastrous and lasting effects than physical violence. Thus, the State party was encouraged to review its definition of torture so that acts of violence associated with that practice were not confused with other forms of ill-treatment. That would also enable victims to demand the compensation to which they were entitled.

18. He was pleased to note that Kazakh legislation provided for the possibility of calling upon the services of a lawyer upon arrest. That was a very important guarantee, because the first hours of detention were decisive. It also enabled the State to protect itself against false allegations of torture.

19. Although legislation entitled suspects to be represented by a lawyer, was that right always respected in reality? What were the functions of the recently created Human Rights Commission and the type of situations and complaints that it examined? He also called attention to the case of a Chinese national extradited to China although he had been at risk of being tortured there. He wondered whether that decision was in conformity with the provisions of article 3 of the Convention. In keeping with article 15 of the Convention, article 77, paragraph 3 (9), of the Constitution stipulated that evidence obtained by illegal means had no legal effect. He referred, however, to a case brought before a court in eastern Kazakhstan

which had accepted evidence of demonstrated inadmissibility, in flagrant violation of the law. A number of countries had witnessed a change in the role of the Office of the Procurator, which, while remaining the authority responsible for the accusation, had taken on the new function of verifying the legality of court decisions. Was that also the case in Kazakhstan? Perhaps the authorities could give thought to all those questions, especially since Kazakhstan had resolutely embarked upon the path to democracy, and given that measures taken to that end should be based on a firm political commitment, a reform of the judiciary, and cultural values that promoted human rights.

20. Ms. GAER (Country Rapporteur) also welcomed the excellent report submitted by the State party and the updated information communicated by the delegation in its oral introduction. She stressed the crucial importance for the Committee of the incorporation into national law of a definition of torture consistent with the one given in article 1 of the Convention. Although torture was defined in the Commentary on the Criminal Code of the Republic of Kazakhstan (para. 13 of the report), no reference had been made to the purposes for which it was used, as set out in article 1 of the Convention. Paragraph 94 of the report recognized the absence until recently of specific training programmes for law enforcement officials and medical personnel aimed at preventing the use of torture. Since then, efforts had been directed at certain categories of civil servants, notably prison staff, but they continued to be very uncoordinated. The adoption of a comprehensive and precise definition of torture would make it possible to devise targeted courses which would leave no possible doubt as to the nature of the acts condemned.

21. She then asked how the authorities gave effect to article 11 of the Convention. Information according to which authority for the prisons had been shifted from the Ministry of the Interior to the Ministry of Justice was interesting, but which services were responsible for monitoring the conditions under which persons were deprived of their liberty (in prisons, detention centres for minors and psychiatric institutions)? Was such monitoring conducted with all the necessary openness? What was the reason for the high percentage of cases of tuberculosis among detainees, the cases of self-mutilation noted in two prisons and those reported by the International Helsinki Federation for Human Rights as well as the physical and sexual violence inflicted on detainees? Had measures been taken to separate refugees and asylum-seekers from common-law criminals? In that connection, she cited the case of Ms. Alebacheu, an Ethiopian national who had come to Kazakhstan for professional reasons and had been detained for 10 days on suspicion of being HIV-positive. Kazakh law provided for the expulsion of persons who were HIV-positive, not for their detention. Had instructions been given to prevent a repetition of such abuses? Did the victims receive compensation? Police staff performance was evaluated, inter alia, as a function of the number of cases elucidated; that was said to be one of the main causes of the use of violence and torture by police officers. Was it planned to establish other criteria to judge their professional conduct? Concerning article 12 of the Convention, she stressed that the more a State party moved ahead with setting up an independent and impartial judiciary, the easier it would be for it to comply with its obligations under that provision. The role of the Office of the Procurator clearly emerged in paragraph 120 of the report, which stated that a legislative solution was being sought for vesting the Procurator with procedural rights to conduct criminal proceedings which he himself had initiated. Who had undertaken that initiative, and had it been successful? In view of the problem set out in paragraph 121 of the report, it would be desirable for independent bodies to monitor investigations to ensure that they were conducted impartially and conscientiously. Did the authorities intend to publicize a decree

on the procedure to be followed in order to help civil servants who were investigating complaints discharge their duties in compliance with the law? Did Kazakhstan plan to publish statistics on acts of torture committed? Would the creation of the office of ombudsman and changes in the functioning of the courts strengthen the independence of the judiciary? Regarding article 13 of the Convention, she sought details on the future committee to receive complaints from persons alleging that they had been tortured. In connection with the numerous allegations of police abuse, she referred to the case of Ms. Ignatushkina, concerning whom vital medical evidence had been illegally confiscated during an investigation, and that of Mr. Martinov who, suspected of theft and drug trafficking, had had his jaw broken and had been threatened with the inoculation of germs carrying venereal disease, before being released for lack of evidence. How did the authorities intend to put a stop to such abuses? In that connection, did the Kazakh Government plan to make the declaration under article 22 of the Convention?

22. Turning to the right of all victims of torture to redress and to fair and adequate compensation (art. 14 of the Convention), she sought information on the outcome of the prosecution of the perpetrators of the offences referred to in paragraphs 145 to 151 of the report and on the compensation granted to the many victims. She would also like to know why the perpetrators of the violations cited in paragraph 149 of the report had not been prosecuted under article 347, paragraph 2, of the Criminal Code (use of coercion to obtain confessions). On the subject of article 15 of the Convention (inadmissibility of a statement obtained under torture), she sought further details on the new regulations authorizing a detainee to see a physician or a lawyer empowered to receive his statement within 72 hours of being taken into custody. Was the information always used in the proceedings? As for article 16 of the Convention (acts of cruel, inhuman or degrading treatment or punishment), she sought more detailed information on medical care for young detainees and especially on the disciplinary sanctions to which they were subjected. It emerged from a 60-minute video on the question that such young persons were the victims of acts of violence. She asked in particular about a man called Prokopenko, who was said to have died following ill-treatment in prison and whose death had not been the subject of any inquiry. Would it be possible to exhume the body and have it examined by an expert to determine the causes of death? She looked forward to a constructive dialogue with the delegation on all those points.

23. Mr. MAVROMMATIS commended the State party on the quality of its initial report. However, he encouraged it to take urgent measures to reform the entire criminal justice system, in particular the procedure for investigating allegations of torture. He would like to know why Kazakhstan had not made a statement on succession to the commitments undertaken by the former USSR with regard to the Convention and other international instruments. He stressed the importance of the definition of torture and called the attention of the members of the delegation to the efforts which the Kazakh authorities must make to combat that phenomenon and ensure that existing legislation in that area was enforced. Guaranteeing the independence and effectiveness of inquiries into any allegations of acts of ill-treatment or torture was crucial. Like Ms. Gaer, he sought details on the Prokopenko case, as well as that of another young man called Veritchak, the investigation on the latter's case apparently having been discontinued for lack of compelling evidence. He would also like to have some information on the new provisions concerning evidence.

24. Mr. RASMUSSEN said that he had been appalled by what he had seen in the documentary "Lager 155" (Camp 155), which described the detention conditions of young detainees and in particular the inhuman way they were treated by the prison authorities. He was not surprised that 80 per cent of those young people mutilated themselves or remained criminal once released. While welcoming the adoption of a five-year plan to combat tuberculosis, he called upon the Kazakh authorities to give priority attention to the disastrous conditions and arbitrary acts that reigned in the detention centres and take the necessary measures to put an end to that situation. Consideration should also be given to reducing the length of custody; the 72-hour period was too long and resulted in too much police abuse, as corroborated in many allegations by Amnesty International. Lastly, he sought more detailed information on isolation cells and incommunicado detention.

25. Mr. CAMARA said he was also pleased about the high level of the delegation; there was thus reason to expect illuminating replies to what at times were very technical questions posed by the Committee. For his part, he wondered about the wording of paragraph 30 of the report, which did not seem very clear. In any case, article 2, paragraph 2, of the Convention did not permit any derogations from the prohibition on torture, even in exceptional circumstances. The Committee had focused in particular on paragraphs 120 to 122 of the report, which dealt with the role of the prosecution. Personally, he was not disturbed about the powers of the Office of the Procurator, because the rules for the organization and functioning of the prosecution were adequate. He would like to find out more about the statutory regime applicable to procurators in Kazakhstan: career, conditions for appointment, disciplinary regime and operational relations between the various members of the Office of the Procurator-General. Above all, he would like to know whether the Procurator-General and his staff were appointed by a Supreme Council of Justice, by the Government or by the Parliament and, more generally, how the independence of the prosecution was ensured: was its status in conformity with the 1990 United Nations Guidelines on the Role of Prosecutors? It was in the details of the rules applied that the independence of the judiciary and the objectivity of the Office of the Procurator were ensured.

26. Mr. HENRIQUES GASPAR, also referring to paragraphs 120 to 122 of the report, asked what actual powers the prosecution had to supervise investigations, notably for taking action on complaints of abuse of authority, ill-treatment and torture. It seemed that the law of 6 September 1999 did not grant the prosecution sufficient independence, because the rule according to which the police must not take part in investigations concerning police officers had not been complied with. Did the Kazakh authorities plan to take any measures to ensure that the prosecution could investigate, in complete independence, acts committed by police officers?

27. Mr. Rasmussen had asked a very important question on the length of custody, given that in other countries, it was usually 48 hours, sometimes but not always with the possibility of an extension to 72 hours in very exceptional circumstances. Likewise, the usual rule was that a suspect must be brought before a judge as quickly as possible and that the length of pre-trial detention should be as short as possible. But it emerged from paragraph 74 of the report that Kazakhstan departed from that principle and that the procurator was empowered to decide on detention, although that should be the prerogative of another authority, such as a judge. The fact that it was the procurator who decided to prolong pre-trial detention did not offer all the necessary guarantees.

28. According to paragraph 78 of the report, the staff of the place of detention ended visits if an attempt was made to provide the detainee with information that might hamper the proceedings or be used in the commission of an offence. Did that mean that the staff at the place of detention listened in on the conversations? Although there was nothing wrong with ensuring that no article or substance was given to the detainee during visits, listening in on conversations was much more questionable. In closing, he asked for more information on how many detainees were awaiting trial and how many prisoners were serving their sentences in Kazakh prisons.

29. The CHAIRMAN said that he wanted to raise the question of a group of Uighurs who, according to Amnesty International, had been returned to China; how did the Kazakh authorities reconcile that action with the obligations assumed under article 3 of the Convention, given that, in the Committee's opinion, there could be no exception to the provisions of that article? It also seemed that, prior to being returned, those persons had been detained in so-called "investigation isolation prisons": that was perhaps just a translation problem, but it would be useful to have details on the nature of such prisons and on the rules governing the imprisonment of persons in those places of detention.

30. In his introduction, Mr. Rogov had said that Kazakhstan was considering the creation of a system for making audiovisual recordings of interrogations. Such a measure would place the State party in the very select circle of the most advanced countries in that area; it would be interesting to have confirmation of that plan.

31. He thanked the delegation for introducing a very interesting and comprehensive report and invited it to return at a later meeting to answer the Committee's questions.

32. Mr. ABDILDIN (Kazakhstan) thanked the Committee for its attention and the competent manner in which it had considered the country report. Kazakhstan would derive enormous benefit from the Committee's recommendations.

33. The Kazakh delegation withdrew.

The first part (public) of the meeting rose at 12.25 p.m.